



August 28, 2002

Mr. John Knight
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2002-4819

Dear Mr. Knight:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167784.

The Lubbock Police Department (the “department”) received a request for all police calls to a specified address as well as any complaints or reports filed against a named individual at the same address during a specified time period. In particular, the request seeks information pertaining to charges of trespassing, harassment, and stalking against the named individual. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by the common law right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976). Common law privacy protects information if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Id.* Where an individual’s criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual’s right to privacy. *See United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). To extent the request asks for records of “any complaints or reports” filed against the named individual, the request seeks a compilation of the individual’s criminal history, and the requested information must be withheld under

section 552.101 in conjunction with the common law privacy concerns expressed in *Reporters Committee*.

However, the request also asks for information about the named individual at a specific location, during a specific time, and concerning specific conduct. We believe that, in this regard, the request does not require the department to provide a compilation for purposes of *Reporters Committee*. Accordingly, we find that Exhibits C and D are not made confidential under the holding in *Reporters Committee* and are therefore not excepted from disclosure under section 552.101 in conjunction with common law privacy.

We note, however, that Exhibits C and D contain information that is excepted from disclosure under section 552.130 of the Government Code, which provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a). We have marked Texas-issued driver's license and license plate information that you must withhold under section 552.130. We have also marked identification numbers that must be redacted under 552.130 if they correspond to "personal identification document[s] issued by an agency of this state or a local agency authorized to issue an identification document." If these identification numbers do not correspond to such documents, they must be released.

We also note that Exhibit D contains a social security number. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security number in Exhibit D is confidential under section 405(c)(2)(C)(viii)(I) and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or

is maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

In summary, to the extent the department maintains records, other than the specifically requested reports, in which the named individual is a suspect, defendant, or arrestee, the department must withhold such information. In addition, the marked motor vehicle record information and identification numbers must be withheld if issued by an authorized agency of this state. The department must also withhold the social security number in Exhibit D if it was obtained or maintained pursuant to a law enacted after October 1, 1990. All other information in Exhibits C and D must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

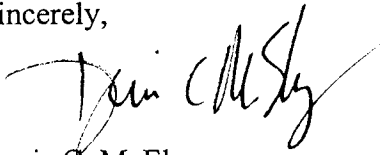
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Denis C. McElroy", written over a horizontal line.

Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/seg

Ref: ID# 167784

Enc. Submitted documents

c: Ms. Cassie Moore
5520 58th Street # 202
Lubbock, Texas 79414
(w/o enclosures)